

# Montana Code Annotated 2013

## TITLE 77. STATE LANDS

### CHAPTER 3

#### Part 3. Coal

**77-3-301. Coal leases authorized.** In response to an application or on its own initiative, the board may lease in a manner that it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal, upon the terms and conditions provided in this section and subject to the rules that the board prescribes.

**History:** En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part); amd. Sec. 4, Ch. 318, L. 2003.

**77-3-302. Lands subject to coal leasing.** The authority to lease extends to state lands no matter how acquired and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued.

**History:** En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

**77-3-303. Rules relating to coal leasing.** (1) The board may adopt rules and perform all acts not inconsistent with The Enabling Act, the constitution, and the statutes of this state that it considers necessary and proper relating to the leasing of state land for coal mining purposes.

(2) The board is encouraged to lease the property interests acquired from the federal government in the Crown Butte land exchange for coal mining purposes. The proceeds from the leases must be used for the direct funding of education, including K-12 school districts, institutions of higher education, and vocational-technical education, unless otherwise provided in the transfer agreement.

**History:** En. Sec. 44, Ch. 60, L. 1927; re-en. Sec. 1805.44, R.C.M. 1935; R.C.M. 1947, 81-507; amd. Sec. 1, Ch. 485, L. 2001.

**77-3-304. Protection of rights of purchasers or prior lessees.** Whenever the leased lands are under certificate of purchase or patents have been issued and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

**History:** En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

**77-3-305. Limitations on leasing.** (1) The board may not issue leases to any citizen of another country or any person, partnership, corporation, association, or other legal entity controlled by interests foreign to the United States unless that country provides for similar or like privileges to citizens of the United States.

(2) The board shall consider whether the extraction of the coal from those lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from those

operations on those lands in the future.

**History:** En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part); amd. Sec. 1, Ch. 127, L. 1983; amd. Sec. 1, Ch. 332, L. 2011.

**77-3-306. Conditions on manner of mining.** (1) Every coal lease shall be conditioned upon compliance with Title 82, chapter 4, parts 1 and 2.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease after a hearing before the board.

**History:** En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

**77-3-307. Improvements of former lessee.** (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition must be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the improvements to the new lessee, the new lessee shall pay the owner the reasonable value of the improvements as far as they are suitable for the new mining operations. If they fail to agree on the value of the improvements, the value must be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that the applicant has paid the owner for the improvements as agreed on between them or as fixed under the provisions of 77-6-306, that the applicant has tendered payment as fixed, or that the owner desires to remove the owner's improvements.

**History:** En. Sec. 43, Ch. 60, L. 1927; re-en. Sec. 1805.43, R.C.M. 1935; amd. Sec. 32, Ch. 428, L. 1973; R.C.M. 1947, 81-506; amd. Sec. 2557, Ch. 56, L. 2009.

**77-3-308. Limitation on public inspection rights.** The department may withhold from public inspection any information obtained from a coal mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

**History:** En. Sec. 3, Ch. 105, L. 1989.

**77-3-309 through 77-3-310 reserved.**

**77-3-311. Form of lease.** The board shall prescribe the form of the lease.

**History:** En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

**77-3-312. Leasing procedures.** (1) (a) Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public

comments on the evaluation.

(b) (i) The board may determine fair market value by competitive bid or through an appraisal.

(ii) If no competitive bids are offered on the coal and land to be leased, the board may enter into a lease that is at least at the full market value as determined by the appraisal pursuant to subsection (1)(b)(i).

(2) Except as provided in subsection (1)(b), leases must be awarded by a competitive bid system, including a bonus bid for the first year's rental that may be amortized for a period of up to 5 years at the discretion of the board, and a lease may not be awarded at less than fair market value.

**History:** En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part); amd. Sec. 2, Ch. 332, L. 2011.

**77-3-313. Bond requirements.** The board may also demand a surety company bond in a form and in an amount as it may determine, conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease. However, a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit provided for under this part in an amount that in the judgment of the board makes the furnishing of a bond unnecessary.

**History:** En. Sec. 42, Ch. 60, L. 1927; re-en. Sec. 1805.42, R.C.M. 1935; R.C.M. 1947, 81-505; amd. Sec. 3, Ch. 332, L. 2011.

**77-3-314. Duration of lease.** (1) (a) Except as provided in subsection (1)(b), coal mining leases must be issued for a primary term of 10 years and for as long thereafter as coal is produced from lands in commercial quantities.

(b) If a lease under this part or a corresponding permit issued pursuant to Title 82, chapter 4, parts 1 and 2, is challenged before an administrative agency or in court, the primary term of the lease must be extended for the period of time that the lease or permit was subject to challenge.

(2) A lease not producing coal in commercial quantities at the end of the primary term must be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine-site location permit under 82-4-122 prior to the end of the primary term, and the lease may not be terminated so long as the lands are covered and described under valid permit.

(3) For the purpose of this part:

(a) "commercial quantities" means that quantity of coal that can be sold at profit in the commercial market;

(b) "covered and described" under a valid permit or "described" in a strip mine or mine-site location permit means that the leased lands or a portion of the leased lands within or outside of the boundaries of the permit area are expected to be affected or disturbed at some point during the life of the permittee's strip-mining or underground-mining operation and are identified in the permittee's permit application.

**History:** En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part); amd. Sec. 4, Ch. 332, L. 2011.

**77-3-315. Repealed.** Sec. 2, Ch. 538, L. 1981.

**History:** En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).

**77-3-316. Rental and royalty terms.** (1) The compensation of the state under all coal mining leases must be upon a rental and royalty basis and must be fixed and determined by the board.

(2) The rental and royalty terms of each lease must be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental may be on a per-acre basis or per-ton basis but the rental may not be less than \$2 per acre.

(4) (a) The amount of the royalty must be based upon:

(i) the kind, grade, and character of the coal in each particular mine;

(ii) the size, shape, and nature of the coal vein, strata, or body; and

(iii) the shipping and marketing facilities for the product.

(b) Consideration must also be given to every other known factor affecting the value of each particular coal mining lease, but the royalty for the coal mined may not be less than 10% of the f.o.b. mine price of a ton prepared for shipment.

**History:** (1), (3), (4)En. Sec. 40, Ch. 60, L. 1927; re-en. Sec. 1805.40, R.C.M. 1935; amd. Sec. 3, Ch. 358, L. 1975; Sec. 81-503, R.C.M. 1947; (2)En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; Sec. 81-502, R.C.M. 1947; R.C.M. 1947, 81-502(part), 81-503; amd. Sec. 5, Ch. 332, L. 2011.

**77-3-317. Report and payment of royalty.** (1) On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes showing:

(a) the number of tons mined during the preceding calendar month;

(b) the price obtained therefor at the mine;

(c) the total amount of all sales; and

(d) any additional information required by the department.

(2) The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

**History:** En. Sec. 45, Ch. 60, L. 1927; re-en. Sec. 1805.45, R.C.M. 1935; amd. Sec. 33, Ch. 428, L. 1973; R.C.M. 1947, 81-508.

**77-3-318. Disposition of royalties and other receipts.** All fees, rentals, royalties, and bonuses collected under state coal leases shall be paid to the department and credited as follows:

(1) All fees shall be credited to the state general fund.

(2) All rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grants to which the lands under lease belong.

**History:** En. Sec. 47, Ch. 60, L. 1927; re-en. Sec. 1805.47, R.C.M. 1935; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975; R.C.M. 1947, 81-510.

**77-3-319 through 77-3-320 reserved.**

**77-3-321. Repealed.** Sec. 8, Ch. 18, L. 1999.

**History:** En. Sec. 46, Ch. 60, L. 1927; re-en. Sec. 1805.46, R.C.M. 1935; R.C.M. 1947, 81-509.

**77-3-322. Obligation to pay royalties under coal lease contract -- interest.** (1) The obligation arising under a coal lease to pay coal royalties to the department, to deliver coal to a purchaser to the credit of the department, or to pay a portion of the proceeds of the sale of the coal to the department is of the essence in the lease contract.

(2) If the operator under a coal lease fails to pay coal royalties to the department within 120 days after the initial coal produced under the lease is marketed and within 90 days for all coal produced and marketed thereafter, the unpaid royalties must bear interest at the legal rate of interest authorized under 31-1-106 from the date due until paid. The operator may remit semiannually to the department the aggregate of 6 months' royalties if the aggregate amount is less than \$50 and annually if the aggregate amount is less than \$10.

(3) An action for failure to make payments under the lease or seeking payments under this section must be filed in the district court for the county in which the coal mine is located, and that court has jurisdiction over any actions brought under this section. The prevailing party in a proceeding brought under this section is entitled to recover court costs and reasonable attorney fees.

(4) This section does not apply if the department has elected to take the owner's or assignee's proportionate share of production in kind or if there is a dispute as to the title to the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

**History:** En. Sec. 1, Ch. 243, L. 2011.

**77-3-323. Audit -- notice -- action to compel payment.** (1) Except as provided in subsection (2), the department may, within 5 years of the filing of a report pursuant to 77-3-317, commence an audit of a lessee's or former lessee's operation to determine whether the report is complete and accurate and whether all royalties owed have been paid. The department shall notify the lessee in writing of the audit. The notice must describe the period for which the audit is being conducted. Upon conclusion of the audit, the department shall notify the lessee of the department's conclusions and, if the department has determined that additional royalties are owed, the basis for that determination. An action to compel payment of royalties due must be commenced within 2 years of the date of mailing the notice.

(2) If a lessee or former lessee, with intent to evade payment of royalties, purposely or knowingly files a false report or purposely or knowingly fails to pay royalties owed, the department may conduct an audit and file an action to collect royalties at any time after the royalties are due.

**History:** En. Sec. 2, Ch. 243, L. 2011.

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